

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT
W.P. No.3807-P/2022

Mst. Sadaf Iqbal

Vs.

**Government of Khyber Pakhtunkhwa through its
Chief Secretary, Peshawar and others**

Date of Hearing **26.11.2024**
For Petitioner(s): **Mr. Faheem Ullah Akhunzada,
Advocate.**
For Respondent(s): **Mr. Yasir Khalid, AAG alongwith
Ms. Sajida Bano, Litigation
Officer, Office of the District
Education Officer (F), Nowshera.**

JUDGMENT

IJAZ ANWAR, J. This writ petition is filed under Article
199 of the Constitution of Islamic Republic of Pakistan, 1973,
with the following prayer:-

“It is, therefore, most humbly prayed that on
acceptance of this writ petition, the
respondents may kindly be directed to issue
appointment order to the petitioner in the
best interest of justice; or

Any other relief not specifically asked for
may also graciously be extended in favour of
the petitioner in the circumstances of the
case”.

2. In essence, petitioner, pursuant to advertisement
floated by the respondent-Education Department, applied for
the post of Primary School Teacher (BPS-12). She duly
appeared in the screening test conducted by ETEA and secured
51 marks out of total 100 marks. Thereafter, in the first
provisional merit list, she stood on top position and in

compliance of the direction of the respondent-Department, she duly submitted domicile certificate of her husband and also computerized Marriage Registration Certificate; however, despite that, she was not considered for appointment. Hence, this writ petition.

3. Comments were called from the respondents, who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioner.

4. Arguments heard and record perused.

5. Perusal of the record reveals that petitioner applied for appointment against the post of Primary School Teacher (BPS-12), pursuant to advertisement issued by the respondents. Despite the fact that she has topped the merit for Union Council Inzari, District Nowshera but was denied appointment on the ground that she has produced belated Marriage Registration Certificate, after the cut of date.

6. Section 3 of the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 (hereinafter to be referred as "the Act") provides as follows:-

"3. Appointment, posting and transfer of primary school teachers. (1) The vacancy of primary school teacher shall be filled in from the candidates belonging to the Union Council of their permanent residence mentioned in their Computerized National Identity Card and domicile, on merit and if no eligible candidate in that Union Council is available where the school is situate, such appointment shall be made on merit from amongst eligible candidates belonging to the adjacent Union Councils:


Provided that on availability of a vacancy, a primary school teacher, appointed from adjacent Union Council, as referred to in this subsection, shall be transferred against a vacant post in a school of the Union Council of his residence within a period of fifteen days.

- (2)
 (3)
 (4)


7. The emphasis in Section 3 of “the Act” is upon the residence of the candidates of the respective Union Councils and their permanent residence mentioned in their CNICs and Domiciles. In the advertisement, there is a condition that female candidates can apply on the domiciles of her husband. The marriage of the petitioner was solemnized on 04.01.2011. Copy of Nikah Nama is placed on file. The domicile of the petitioner’s husband, obtained in the year, 2008, also shows her residence as Union Council Inzari. Moreover, the CNIC of the petitioner, obtained immediately after her marriage in the year, 2011, also shows her husband’s name and address as Union Council Inzari. Thus, where the addresses of the petitioner in her CNIC and that in the Domicile of her husband tally with UC Inzari, the mere fact that Marriage Registration Certificate was produced belatedly, would not deprive her of her appointment. The purpose of producing Marriage Registration Certificate from NADRA is that no manipulation is made subsequently while in the instant case, as stated above, all those record was available since the year, 2011, while the cut of date in the advertisement is mentioned as 15.12.2021.

8. The merit position of the petitioner has not been disputed/denied. Admittedly, she has topped the merit; similarly, on the first date of hearing, on the directions of this Court, one post of Primary School Teacher (BPS-12) has been kept vacant, as such, we allow this writ petition and direct the respondents to issue formal appointment order as Primary School Teacher (BPS-12) to the petitioner positively within a period of one month. It is further clarified that petitioner would also be entitled to seniority alongwith her colleagues appointed pursuant to the same advertisement, however, she is also held entitled to pay fixation sans arrears.

Announced
Dt:26.11.2024



**Senior
Puisne Judge**



Judge

(DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Fazal Subhan